

RECORD AND STIPULATIONS

The Appeals Board has considered the record and stipulations as set forth in its original Order of January 12, 2000.

ISSUES

What is the nature and extent of claimant's injury and disability? And, more particularly, did claimant put forth a good faith effort to find employment after leaving her employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The factual circumstances relevant to this issue have been discussed in detail by the Administrative Law Judge, the Board and the Court of Appeals. Those facts will not be restated herein. The only issue before the Board deals with claimant's good faith effort to obtain employment after leaving respondent. More particularly, the Court of Appeals remanded this matter to the Board after finding the Board had failed to consider a letter from claimant's counsel to respondent's counsel dated November 23, 1998, and how that letter affects its good faith determination. The letter requested that claimant be provided accommodated work within the restrictions of Sergio Delgado, M.D., and that a decision be made within 10 days of the date of the letter.

That letter, which was Exhibit 4 to the regular hearing, was a part of the record as presented to the Workers Compensation Board at the time of its decision. It is acknowledged the Board did not specifically mention the letter in its opinion. The Board did, however, specifically mention claimant's less than adequate efforts at obtaining employment following her termination of employment with respondent. Respondent, in September 1998, returned claimant to work at a light duty position within the restrictions of the treating physician. Claimant worked that job for approximately one hour, and then, after deciding she could not perform the job, walked off. Claimant, herself, never again contacted respondent about seeking employment. The only contact with respondent came in the form of the November 23, 1998, attorney letter.

The Board's finding that claimant did not make a good faith effort to find employment after her termination was premised on claimant's failure to make a consistent, determined and good faith effort to obtain alternative employment with other employers after her attempt to return to work for respondent failed. Respondent's decision not to return claimant to an accommodated position after receiving the letter from her attorney was justified, based upon the prior attempt to return claimant to work at which time claimant worked for only one hour and then walked off, even though accommodated work within her restrictions had been provided. Apparently respondent believed that to return

claimant to respondent's employment within the restrictions of Dr. Delgado after the earlier attempt had proved so fruitless would be an exercise in futility. Claimant disagrees.

Any inquiry into the good faith of an employee's efforts to find appropriate employment must proceed on a case-by-case basis. Parsons v. Seaboard Farms, Inc., 27 Kan. App. 2d 843, 9 P.3d 591 (2000).

The Board found that claimant's attempts at employment after this one hour stint with respondent did not constitute a good faith effort at obtaining employment, post injury. The Board's opinion has not changed. Even taking into consideration the letter request by claimant's attorney, the Board finds that, overall, claimant failed to display a good faith effort to obtain employment, post award. The Board has, in reaching this decision, considered not only the letter of November 23, 1998, but also claimant's actions or lack of action thereafter. The Board earlier found, and continues to find, that those attempts were inadequate.

Whether a claimant requested accommodated work from an employer is just one factor, viewed along with the rest of the record, in determining whether the claimant in good faith attempted to obtain appropriate work. Oliver v. Boeing Company-Wichita, 26 Kan. App. 2d 74, 77, 977 P.2d 288, *rev. denied* 267 Kan. 886 (1999).

The Board finds, based upon the evidence presented in this case, that claimant has violated the policies set forth in Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997), in that claimant has failed to make a good faith effort to obtain post-injury employment. In so concluding, the Board awards claimant a 5 percent impairment to the body as a whole based upon a functional impairment, reaffirming its award of January 12, 2000.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that an award is granted in favor of the claimant, Diane Cooper, and against the respondent, U.S.D. 475, and its insurance carrier, Kansas Association of School Boards, for a 5 percent permanent partial disability to the body as a whole for an injury occurring on January 20, 1998, and based upon an average weekly wage of \$119 per week.

Claimant is awarded 17.71 weeks temporary total disability compensation at the rate of \$79.34 per week totaling \$1,405.11, followed by 20.61 weeks permanent partial disability compensation at the rate of \$79.34 per week totaling \$1,635.20, for a 5 percent permanent

partial functional disability, for a total award of \$3,040.31, all of which is due and owing and ordered paid in one lump sum, minus amounts previously paid.

In all other regards, the Board's award of January 12, 2000, is affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director